Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	DOCKET FILE COPY ORIGINAL
	)	
Amendment to the Commission's Rules	)	
Regarding a Plan for Sharing	)	WT Docket No. 95-157
the Costs of Microwave Relocation	)	RM-8643

CONSOLIDATED REPLY TO OPPOSITIONS TO AAR'S PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, the Association of American Railroads ("AAR"), by its attorneys, hereby replies to the following oppositions to and comments on the Petition for Partial Clarification and Reconsideration filed by AAR on July 12, 1996 in the above-captioned proceeding:[1] the "Opposition to Petitions for Reconsideration" filed by AT&T Wireless Services, Inc. ("AT&T") (the "AT&T Opposition"); the "Opposition to Petitions for Reconsideration" filed by Omnipoint Communications, Inc. ("Omnipoint") (the "Omnipoint Opposition"); the "Comments on Petitions for Reconsideration of the Personal Communications Industry Association" ("PCIA Comments") and the "Comments of Pacific Bell Mobile Services on Petitions for Reconsideration" ("PBMS Comments") (collectively, the "Opposing Parties"). In support of this Consolidated Reply the following is shown:

I. The Rules Regarding Comparable Facilities Should be Reconsidered

Each of the Opposing Parties opposed AAR's proposals that the Commission ensure that incumbents be made completely whole as a result of involuntary relocation --

[1] First Report and Order and Further Notice of Proposed Rule Making, FCC 96-196 (April 30, 1996), 61 Fed. Reg. 29,679 (1996) ("First R & O" or "Further Notice").

which was one of the Commission's fundamental tenets in this proceeding.[2] In this regard, AAR hereby reiterates its position that the capacity and reliability of a replacement system must be equal to the capacity and reliability an incumbent possessed prior to relocation. Contrary to the argument made by Omnipoint, AAR's member railroads do not seek to profit from the relocation process by getting bigger or better systems,[3] but merely wish to be placed in the same position they occupied before relocating to new frequencies for the benefit of PCS providers. The PCS industry's posture on the topic of capacity/reliability is typified by PCIA's comment that incumbents "will have a new system which is, on paper, as good as the relocated system."[4] But AAR's member railroads are not interested in microwave systems that are as good "on paper" as the systems they presently operate. These systems are not used to control and operate paper trains -- they control and operate real trains, in real time, in the real world. Accordingly, the railroads require replacement systems that are as good as their present systems in every way, including the total throughput capacity and radio link reliability.

II. The Ten Year Sunset For Reimbursement Obligations Should be Eliminated

AAR's suggestion that the Commission eliminate the ten-year sunset on a PCS licensee's obligation to pay the costs of an incumbent's relocation was opposed by each of the Opposing Parties. This opposition is not surprising, given that the sunset will give the PCS licensees an economic windfall at the expense of incumbents. Remote and rural

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[2] AT&T Opposition at 5-7; Omnipoint Opposition at 6; PBMS Comments at 5-7;PCIA Comments at 7-8.

[3] Omnipoint Opposition at 6.

[4] PCIA Comment, at 8 (emphasis added).

areas will be the last to receive PCS service -- with deployment likely more than ten years from now; incumbents in those areas will have no assurance that they will be relocated by a PCS provider before the reimbursement obligation expires. It would be grossly unfair to require incumbents to pay for their own relocation in these areas, while PCS licensees will benefit directly from such relocation. Moreover, contrary to the assertions of AT&T, many incumbents do not plan to replace their existing equipment before 2005.[5]

On a related issue regarding the timing of the parties' relocation obligations, AT&T reiterated its earlier proposal that incumbents should either be forced to vacate the 2 GHz band at the conclusion of the mandatory negotiation period or have their licenses converted automatically to secondary status at the end of the mandatory period.[6] AAR again urges the Commission to reject this extreme proposal both on procedural grounds (it was introduced in this proceeding in an untimely manner and departs radically from anything contemplated earlier in the proceeding) and on substantive grounds because it is grossly unfair to incumbents. The AT&T proposal would give PCS licensees undue leverage in relocation negotiations, by which they could pressure incumbents to accept inadequate relocation offers or face the alternative of being forced off of the band immediately. Most importantly, this proposal would threaten the vital safety functions of

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[5] AT&T Opposition at 4. AT&T asserts that a statement made by APCO that most incumbents plan to replace their analog systems with digital facilities once the useful life of the current equipment has expired somehow vitiates AAR's statement that "the Commission's assumption regarding amortization is unsound." Notwithstanding the fact that APCO does not represent AAR or any of its members, APCO's statement in no way invalidates AAR's contention. APCO did not state when incumbents plan to upgrade their own equipment, only that they plan to do so at the end of the useful life of their existing equipment. As noted by AAR and other incumbents, the useful life could be as long as 25 years.

[6] AT&T at 2-5.

the railroads' microwave communications systems by either forcing incumbents into hasty relocations or by forcing them to accept interference while operating in secondary status[7]. Neither of these options is acceptable to the nation's railroads and the Commission should again reject the AT&T proposal.

III. The Two Percent Cap on Transactional Expenses Should be Eliminated

One of the Commission's paramount underlying goals in this proceeding is to make microwave incumbents whole in the process of relocation[8]. The two percent cap on the recovery of an incumbent's transactional expenses is contrary to this goal. Because it would provide PCS licensees with an economic windfall by requiring incumbents to pay a portion of legitimate relocation expenses, the Opposing Parties all supported the two percent cap and opposed AAR's proposal to eliminate it.

As noted by AAR in its Petition, the Commission's rules otherwise require transaction expenses to be legitimate and prudent and directly attributable to an involuntary relocation in order to be reimbursable. There may be some occasions where an incumbent's legitimate and prudent transaction expenses for the relocation of certain links will exceed two percent of total costs. In such instances, use of an arbitrary two percent limit on the recovery of transaction expenses will require an incumbent to absorb some of the costs of its forced relocation, a result clearly at odds with the paramount goal of this proceeding. Rather than imposing an arbitrary ceiling on an incumbent's legitimate and prudent transaction expenses, the Commission should modify its rules to require that

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[7] See First R & O, 9/89.

[8] See First R & O at ¶23 ("Under involuntary relocation) the incumbent is required to relocate, provided the PCS licensee meets the conditions under our rules for making the incumbent whole."

all such expenses be reimbursed.

IV. CONCLUSION

For the foregoing reasons, AAR urges the Commission to reject the arguments made by AT&T, Omnipoint, PBMS and PCIA. To ensure that microwave incumbents are made whole as a result of relocation, the Commission should adopt the proposals contained in AAR's Petition for Reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brenda Chapman-Barnes, a secretary with the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, hereby certify that on this 19th day of August, 1996, a copy of the Consolidated Reply to Oppositions to AAR's Petition for Reconsideration was mailed, first-class, postage prepaid to:

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